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Appl. No. 10/054,825
Reply Date: April 4, 2007
Reply to Office Action of January 4, 2007

•• REMARKS/ARGUMENTS ••

The Office Action of January 4, 2007 has been thoroughly studied. Accordingly, the following remarks are believed to be sufficient to place the application into condition for allowance.

Claims 1-11 are pending in this application.

Claims 1-8 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,699,228 to Chmielewski et al.

Claims 9 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chmielewski et al. in view of Japanese reference no. 1996-196565 to Onishi et al.

Claims 1-4 and 9 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3-5 of U.S. Patent No. 6,921,394.

For the reasons set forth below, it is submitted that all of the pending claims are patentable over the prior art of record and therefore, each of the outstanding prior art rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Chmielewski et al. as disclosing:

...a diaper, as shown in figure 1, comprising a primary absorbent batt assembly 34, a pair of barrier cuffs 501, and a supplementary absorbent batt assembly 70. The primary absorbent batt assembly 34 has a body facing surface sheet 30, a garment facing surface sheet 32, a front waist region 22, a rear waist region 24, and a crotch region 26. The barrier cuffs 501 have a proximal edge portion 304 and a distal edge portion 503, and extend along transversely opposite sides of the primary absorbent

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batt assembly 34 so as to rise up from the body facing surface, as shown in figure 2. The supplementary absorbent batt assembly 70 has a body facing surface 704 and an opposite surface 607, as shown in figure 2. The supplementary absorbent batt assembly 70 also has a proximal end portion 724 and distal end portion 728, as shown in figure 1, the proximal end portion 724 lying [in] the front waist region 22. The distal end portion 728 is spaced upwardly from the primary absorbent batt assembly 34 to define a pocket opening 80 when under tension from, and therefore supported by, the barrier cuffs 501, as shown in figure 3.

The Examiner further states:

Chmielewski discloses in column 10, lines 3-6, the rear edge 728 of the supplementary absorbent batt assembly 70 may be attached to portions of the primary absorbent batt assembly adjacent the topsheet.

The Examiner concludes:

It would have been obvious....to space the opposite side edges of the supplementary absorbent batt assembly being spaced apart upwardly from the body facing surface of the primary absorbent batt assembly, since the applicant has not shown that this configuration serves any stated purpose or solves any stated problem, and Chmielewski has disclosed the intention to attach the supplementary absorbent batt assembly at portions other than the topsheet of the primary assembly.

The Examiner goes on to state:

It appears the invention would perform equally well with the opposite side edges of the supplementary absorbent batt assembly being spaced slightly apart from or attached to the body facing surface of the primary absorbent batt assembly, since either configuration allows for the formation of a pocket opening between the supplementary and primary absorbent batt assemblies, thus allowing the invention to perform equally well either way.

On page 2 of the Office Action under the *Response to Arguments* section the Examiner has stated:

With respect to the applicant's arguments regarding the arch-shaped pocket opening of Chmielewski, it is note that Chmielewski discloses in column 15, lines 1-8, that the curvature of the pocket is not required for the article to function as intended.

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It is respectfully submitted that the Examiner has misinterpreted the teachings of Chmielewski et al. or at least has departed from the express teachings of this reference.

The undersigned would first like to address the Examiner's contention that "Chmielewski discloses in column 15, lines 1-8, that the curvature of the pocket is not required for the article to function as intended." It is noted that this remark was made in response to applicants' argument that Chmielewski et al. expressly teaches that:

The contraction of the inner pair of waste containment flaps tends to encourage the rear edge of the upper absorbent structure to rise above the lower topsheet, forming an arched-shaped pocket opening

and therefore it was necessary to attach the absorbent batt assemblies directly to one another, for example as shown in Fig. 2.

The Examiner has rebutted this argument by relying upon Chmielewski et al. at column 15, lines 1-8. This portion of Chmielewski et al. reads:

While the preferred embodiments have been described in connection with imparting a curvature to either the upper or lower absorbent structures, the curvature, though preferred, may be omitted from the absorbent garment and the garment will still generally prevent the forward migration of BM. Even without the curvature, the preferred embodiments will generally prevent BM from soiling the genitals and isolate the urine from BM to reduce the incidence of diaper rash.

This portion of Chmielewski et al. has to be interpreted with the description of how the curved structure is formed. Accordingly, it is noted that at column 3, lines 49-53, Chmielewski et al. teaches:

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During manufacturing, the lower absorbent structure preferably has a curved contour about the longitudinal axis imparted thereto at the time that the corners at the rear edge of the upper absorbent structure are secured to the lower topsheet.
The Examiner appears to conclude that the curvature is related to how Chmielewski et al.

attaches the absorbent batt assemblies together, and may believe that Chmielewski et al. teaches that if the curvature is not included, the absorbent batt assemblies are attached some other way than shown in Fig. 2.

However, this is not the case and is certainly not taught by Chmielewski et al.

Chmielewski et al. teaches that the curvature is produced by providing the lower absorbent structure with a curved contour at the time the upper and lower absorbent structures are secured together.

It thus follows, absent some other teaching by Chmielewski et al., that if one wished to exclude the curved structure, one would merely not provide the lower absorbent structure with a curved contour at the time the upper and lower absorbent structures are secured together.

There is no teaching as to any manner of attaching the upper and lower absorbent structures are secured together to as to produce or exclude a curved structure.

Note: the Examiner's statement that:

The distal end portion 728 is spaced upwardly from the primary absorbent batt assembly 34 to define a pocket opening 80 when under tension from, and therefore supported by, the barrier cuffs 501, as shown in figure 3.

Is inconsistent with Chmielewski et al.'s teaching that the curved contour is imparted to the lower absorbent structure at the time the upper and lower absorbent structures are secured together.

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Chmielewski et al. does not teach that tension from the barrier cuffs causes the pocket opening to become defined as the Examiner implies.

With regard to the Examiner's citing Chmielewski et al. as teaching:

... in column 10, lines 3-6, the rear edge 728 of the supplementary absorbent batt assembly 70 may be attached to portions of the primary absorbent batt assembly adjacent the topsheet,

it is noted that what Chmielewski et al. actually teaches is:

...the upper absorbent structure 70 is preferably positioned substantially completely between the outer pair of standing leg gathers 501, 502. At its rear edge 728, the upper absorbent structure 70 is attached only at the corners 730 to topsheet 30 or other subjacent components of the absorbent garment.

The Examiner will note that the definition of the term "subjacent" is "lying under or below."

(www.websters.com).

Accordingly, with reference to Fig. 2 Chmielewski et al. teaches that in alternative embodiments, the upper absorbent structure 70 can be attached to components that lie under or below topsheet 30.

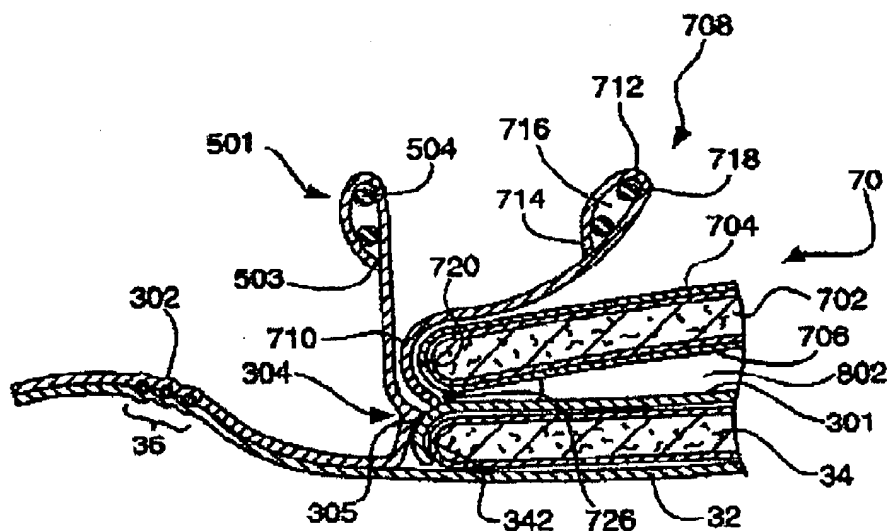
This teaching excludes attaching the upper absorbent structure 70 to distal edge portions of the barrier cuffs 501 of Chmielewski et al. in the manner required by applicants' claimed invention.

The Examiner's reliance upon Chmielewski et al. as teaching that the "supplementary absorbent batt assembly 70 may be attached to portions of the primary absorbent batt assembly adjacent the topsheet" is misleading and not at all supported by Chmielewski et al.

For the Examiner's reference, Fig. 2 of Chmielewski et al. is reproduced as follows:

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FIG. 2



It is noted that applicants' structure, which is not found in Chmielewski et al. allows the supplementary absorbent batt to be lifted up and spaced apart from the primary batt assembly under the elastically contractible force of the barrier cuffs and be held in such a spaced-part position by the elastically contractible force, when the diaper is worn by a person.

In contrast, in Chmielewski et al. the upper absorbent structure 70 is not supported by the inboard leg gathers 704 or by the inboard leg gathers 501. Accordingly the upper absorbent structure 70 cannot be spaced apart upwardly from the lower absorbent core 34 by the elastically contractible force of the inboard gathers 708 or 501.

Thus, Chmielewski et al. fails to teach the structure and related or associated function of applicants' claimed invention.

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The Examiner as relied upon Onishi et al. as teaching a second supplementary absorbent batt assembly located in the rear waist region and smaller than the supplementary absorbent batt assembly.

In combining the teachings of Chmielewski et al. and Onishi et al. the Examiner takes the position that:

It would have been obvious to one of ordinary skill in the art at the time of invention to construct the diaper of Chmielewski with a secondary supplementary absorbent batt assembly, as taught by Onishi, to trap waste and minimize contact of the wearer of the diaper.

The Examiner's further reliance upon Onishi et al. does not address or overcome the differences between Chmielewski et al. and applicants' claimed invention.

With regard to the nonstatutory double patenting rejection, it is noted that in U.S. Patent No. 6,921,394 the first absorbent panel and the second absorbent panel are not situated, or claimed, so as to meet the requirement in the present application of "said supplementary absorbent batt assembly being placed upon said body facing surface of said primary absorbent batt assembly."

Based upon the above distinctions between the prior art, properly considered as a whole and the present invention, and the overall teachings of the prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon the prior art as would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

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It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is not novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejection of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the outstanding Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



Michael S. Gzybowski
Reg. No. 32,816

BUTZEL LONG
350 South Main Street
Suite 300
Ann Arbor, Michigan 48104
(734) 995-3110

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